

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 JESUS RODRIGUEZ RODRIQUEZ,

4 Case No. 2:22-cv-01651-MMD-VCF

5 Plaintiff,

6 ORDER

5 v.

6 CHARLES DANIELS, et al.,

7 Defendants.

9 This action began with a pro se civil rights complaint filed pursuant to 42 U.S.C. §
10 1983 by a state prisoner. Plaintiff has submitted an application to proceed *in forma*
11 *pauperis*. (ECF No. 1.) Based on the financial information provided, the Court finds that
12 Plaintiff is unable to prepay the full filing fee in this matter.

13 The Court entered a screening order on November 1, 2022. (ECF No. 3.) The
14 screening order imposed a stay, and the Court entered a subsequent order in which the
15 parties were assigned to mediation by a court-appointed mediator. (ECF Nos. 3, 7.) The
16 parties participated in a mediation conference, but they did not reach a settlement. (ECF
17 No. 9.)

18 Following the mediation conference, Plaintiff filed a motion for appointment of
19 counsel. (ECF No. 10.) A litigant does not have a constitutional right to appointed counsel
20 in 42 U.S.C. § 1983 civil rights claims. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th
21 Cir. 1981). Pursuant to 28 U.S.C. § 1915(e)(1), “[t]he court may request an attorney to
22 represent any person unable to afford counsel.” However, the court will appoint counsel
23 for indigent civil litigants only in “exceptional circumstances.” *Palmer v. Valdez*, 560 F.3d
24 965, 970 (9th Cir. 2009) (§ 1983 action). “When determining whether ‘exceptional
25 circumstances’ exist, a court must consider ‘the likelihood of success on the merits as
26 well as the ability of the petitioner to articulate his claims *pro se* in light of the complexity
27 of the legal issues involved.” *Id.* “Neither of these considerations is dispositive and
28 instead must be viewed together.” *Id.*

1 The Court previously denied a motion for counsel in its screening order. (ECF No.
2 3 at 5-6.) The Court did not find exceptional circumstances to warrant the appointment
3 of counsel. (*Id.* at 6.) Plaintiff's second motion for appointment of counsel does not
4 include any new allegations or arguments that convince the Court that appointment of
5 counsel is warranted at this time. Accordingly, the Court denies the motion without
6 prejudice.

7 For the foregoing reasons, **IT IS ORDERED** that:

8 1. Plaintiff's application to proceed *in forma pauperis* (ECF No. 1) is
9 **GRANTED**. Plaintiff shall not be required to pay an initial installment of the filing fee. In
10 the event that this action is dismissed, the full filing fee must still be paid pursuant to 28
11 U.S.C. § 1915(b)(2).

12 2. The movant herein is permitted to maintain this action to conclusion without
13 the necessity of prepayment of any additional fees or costs or the giving of security
14 therefor.

15 3. Pursuant to 28 U.S.C. § 1915, as amended by the Prison Litigation Reform
16 Act, the Nevada Department of Corrections will forward payments from the account of
17 **Jesus Rodriguez Rodriguez, #1236702** to the Clerk of the United States District Court,
18 District of Nevada, 20% of the preceding month's deposits (in months that the account
19 exceeds \$10.00) until the full \$350 filing fee has been paid for this action. The Clerk of
20 the Court will send a copy of this order to the Finance Division of the Clerk's Office. The
21 Clerk will send a copy of this order to the attention of **Chief of Inmate Services for the**
22 **Nevada Department of Corrections**, P.O. Box 7011, Carson City, NV 89702.

23 4. The Clerk of the Court shall electronically **SERVE** a copy of this order and
24 a copy of Plaintiff's complaint (ECF No. 4) on the Office of the Attorney General of the
25 State of Nevada by adding the Attorney General of the State of Nevada to the docket
26 sheet. This does not indicate acceptance of service.

27 5. Service must be perfected within ninety (90) days from the date of this order
28 pursuant to Fed. R. Civ. P. 4(m).

1 6. Subject to the findings of the screening order (ECF No. 3), within twenty-
2 one (21) days of the date of entry of this order, the Attorney General's Office shall file a
3 notice advising the Court and Plaintiff of: (a) the names of the defendants for whom it
4 accepts service; (b) the names of the defendants for whom it does not accept service,
5 and (c) the names of the defendants for whom it is filing the last-known-address
6 information under seal. As to any of the named defendants for whom the Attorney
7 General's Office cannot accept service, the Office shall file, under seal, but shall not serve
8 the inmate Plaintiff the last known address(es) of those defendant(s) for whom it has such
9 information. If the last known address of the defendant(s) is a post office box, the Attorney
10 General's Office shall attempt to obtain and provide the last known physical address(es).

11 7. If service cannot be accepted for any of the named defendant(s), Plaintiff
12 shall file a motion identifying the unserved defendant(s), requesting issuance of a
13 summons, and specifying a full name and address for the defendant(s). For the
14 defendant(s) as to which the Attorney General has not provided last-known-address
15 information, Plaintiff shall provide the full name and address for the defendant(s).

16 8. If the Attorney General accepts service of process for any named
17 defendant(s), such defendant(s) shall file and serve an answer or other response to the
18 complaint (ECF No. 4) within sixty (60) days from the date of this order.

19 9. Plaintiff shall serve upon defendant(s) or, if an appearance has been
20 entered by counsel, upon their attorney(s), a copy of every pleading, motion or other
21 document submitted for consideration by the Court. If Plaintiff electronically files a
22 document with the Court's electronic-filing system, no certificate of service is required.
23 Fed. R. Civ. P. 5(d)(1)(B); Nev. Loc. R. IC 4-1(b); Nev. Loc. R. 5-1. However, if Plaintiff
24 mails the document to the Court, Plaintiff shall include with the original document
25 submitted for filing a certificate stating the date that a true and correct copy of the
26 document was mailed to the defendants or counsel for the defendants. If counsel has
27 entered a notice of appearance, Plaintiff shall direct service to the individual attorney
28 named in the notice of appearance, at the physical or electronic address stated therein.

1 The Court may disregard any document received by a district judge or magistrate judge
2 which has not been filed with the Clerk, and any document received by a district judge,
3 magistrate judge, or the Clerk which fails to include a certificate showing proper service
4 when required.

5 10. This case is no longer stayed.

6 11. Plaintiff's motion for appointment of counsel (ECF No. 10) is denied without
7 prejudice.

8 DATED THIS 11th day of April 2023.

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10 UNITED STATES MAGISTRATE JUDGE

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